IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of CURTIS GENE THORNTON, Petitioner.	))))))))	No. 63345-7-I DIVISION ONE UNPUBLISHED OPINION FILED: February 1, 2010

Grosse, J. — A successive personal restraint petition is subject to dismissal under RCW 10.73.140 when the petitioner fails to show good cause why the grounds asserted in the current petition were not raised in the previous petition. Here, Curtis Thornton challenged his 1993 convictions in a previous personal restraint petition and now challenges those convictions again in a subsequent petition. But he fails to show good cause why he did not raise in the previous petition the claims he raises now when they allege defects on the face of the judgment and sentence and plea documents, both of which have remained unchanged since they were entered. Accordingly, we dismiss the petition as an improper successive petition.

FACTS

In April 1993, Thornton pleaded guilty to one count of attempted second degree robbery (Count I) and one count of second degree robbery (Count II). The charges were based on two incidents: one involving the completed robbery of a fast food restaurant and one involving an attempted robbery of a food market two days later. The Statement of Defendant on Plea of Guilty (Plea Statement) advised Thornton that the maximum sentence on the attempted second degree robbery was five years'

imprisonment and a $10,000 fine and the maximum sentence on the second degree robbery was ten years' imprisonment and a $20,000 fine. The Plea Statement also advised that he would be sentenced to at least one year of community placement. In fact, community placement was not a statutorily authorized consequence of either crime at the time Thornton was convicted.[1]

The court imposed a standard range sentence of 53 months' confinement, but did not impose community placement. The court also ordered that Thornton have no contact with the victims of both the attempted robbery and the completed robbery for a maximum term of ten years. The judgment and sentence listed the maximum penalty for both crimes as ten years' confinement and/or a $20,000 fine.

After Thornton was later determined to be a persistent offender based on the 1993 convictions, he challenged the validity of these convictions in a personal restraint petition. In December 2006, this court dismissed the petition as untimely because it was filed more than one year after the 1993 convictions became final. In doing so, this court concluded that he failed to establish that his claims fell under any of the exceptions to the limitation period for collateral attacks. Thornton again challenges the 1993 convictions in a personal restraint petition, contending that his petition is not time-barred because the judgment and sentence is invalid on its face.

ANALYSIS

RCW 10.73.140 bars this court's review of subsequent personal restraint petitions where the petitioner filed a previous petition on similar grounds or fails to show good cause why the new grounds were not raised in the earlier petition.

[1] See former RCW 9.94A.120(9) (1993).

Specifically, the statute provides:

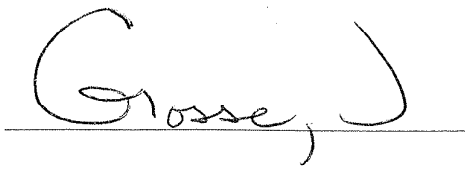
> If a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition. Upon receipt of a personal restraint petition, the court of appeals shall review the petition and determine whether the person has previously filed a petition or petitions and if so, compare them. If upon review, the court of appeals finds that the petitioner has previously raised the same grounds for review, or that the petitioner has failed to show good cause why the ground was not raised earlier, the court of appeals shall dismiss the petition on its own motion without requiring the state to respond to the petition. Upon receipt of a first or subsequent petition, the court of appeals shall, whenever possible, review the petition and determine if the petition is based on frivolous grounds. If frivolous, the court of appeals shall dismiss the petition on its own motion without first requiring the state to respond to the petition.[2]

Here, Thornton previously filed a personal restraint petition, challenging the validity of his 1993 convictions for attempted second degree robbery and second degree robbery, which were used later to support a persistent offender finding. This court dismissed the petition, concluding that this claim was subject to the time-bar under RCW 10.73.090 because he failed to establish an error on the face of the judgment and sentence and that his claim fell under any of the recognized exceptions to the time limitation set forth in RCW 10.73.100. According to the court's order of dismissal, he argued that because he was not advised of all the sentencing consequences before pleading guilty, the convictions based on those pleas were constitutionally infirm and could not serve as a basis for his Persistent Offender Accountability Act (POAA) sentence.

As the State contends, Thornton fails to show good cause why he did not raise

[2] RCW 10.73.140.

the grounds he now asserts in the previous petition. There were no changes in the judgment and sentence and plea statement since he filed the first petition and the alleged errors he now claims were contained in those documents at that time. Thus, we dismiss the current petition under RCW 10.73.140 and need not reach the remaining issues raised.[3]



WE CONCUR:

[3] In any event, we note that Thornton's personal restraint petition is also time-barred under RCW 10.73.090 because he fails to demonstrate that the judgment and sentence is facially invalid. The error in stating the maximum penalty is a technical defect that does not affect the validity of the judgment and sentence. See In re Pers. Restraint of McKiearnan, 165 Wn.2d 777, 782-83, 203 P.3d 375 (2009). The trial court also properly imposed an order prohibiting contact with the victims of both crimes for ten years. This was the statutory maximum for the other crime of second degree robbery and both victims were subjected to the same criminal conduct perpetrated by Thornton: they were working as cashiers when Thornton, armed with a gun, demanded they empty their cash registers. Thus, prohibiting contact with both victims was directly related to the circumstances of both crimes and therefore a properly imposed crime-related prohibition. See former RCW 9.94A.120(17) (1993) (in effect at the time of Thornton's sentencing). See also In re Pers. Restraint of Turay, 150 Wn.2d 71, 74 P.3d 1194 (2003) (when a successive petition is also untimely, this court must dismiss it rather than transfer it to the state Supreme Court).